REMARKS

In the Office Action dated September 3, 2009, claims 1-74 were pending and under examination. In the Office Action, claims 1-74 were objected to. Claims 1-74 were rejected.

In response, claims 1-4, 6, 8, 23, 27-28, 30, 39, 41 and 62-65 are amended. New claim 75 is added. Accordingly, claims 1-75 are pending in the present application. No new matter is added.

Applicant responds to the points raised in the Office Action as follows.

Claim Objections

The Office Action indicates that claims 1-74 are objected to because of informalities, including use of the term "characterized in that." The claims are amended to remove the term. Applicant therefore respectfully requests that the objection to claims 1-74 be reconsidered and withdrawn.

Claim Rejections - 35 U.S.C. § 112

The Office Action indicates that claims 6, 30-38, 42-44 and 66-74 are rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Applicant respectfully traverses the rejection.

Regarding claims 6 and 30, the Office Action indicates that "the original specification does not disclose that the falling number of teff grain is substantially stable for at least 2-3 weeks." Applicant has amended claims 6 and 30 to recite that the falling number of the claimed flour at the moment of grinding is then stable for at least 2-3 weeks. The recitation in amended claims 6 and 30 is supported in the specification in the paragraph spanning page 9, line 6 - page 10, line 2. Accordingly, claim 6,

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and claims 30-38, 42-44 and 66-74, which depend from claim 6, are supported in the original application as filed, and therefore comply with the written description requirement.

Regarding claim 23, Applicant has amended the claim to indicate that the recited percentages are indicative of the flour contents. The recitation recited in claim 23 is supported in the specification on page 12, lines 3-8. Accordingly, claim 23 is enabled by the specification, and complies with the written description requirement. Applicant therefore requests that the rejection of the claim under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

The Office Action indicates that claims 8, 23, 27-28 and 62-65 are rejected under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. The rejection is respectfully traversed.

Claims 8 and 23 are amended to indicate the weight percentages of the recited items. Applicant submits that claims 8 and 23 comply with the requirements of 35 U.S.C. § 112, second paragraph, and request that the rejection of those claims on this basis be reconsidered and withdrawn.

Claim 28 is amended to remove the language that the Office Action indicates as being directed to broad/narrow limitations. Applicant respectfully submits that claim 28 complies with the requirements of 35 U.S.C. § 112, second paragraph, and requests that the rejection of this claim under this section be reconsidered and withdrawn.

Claim 27 is amended to remove the term "luxury food product." Applicant believes that claim 27 complies with 35 U.S.C. § 112, second paragraph, and respectfully requests that the rejection on

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this basis of claim 27, as well as that of claims 62-65, which depend from claim 27, be reconsidered and withdrawn.

Claims and 62-65 are also amended to recite a food product in keeping with the recitation of claim 27 from which claims 62-65 depend.

Claim Rejections - 35 U.S.C. § 103

The Office Action indicates that claims 1, 4, 8-10, 15-23, 27, 29, 39-41, 45-48 and 62-65 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kindie et al. (US Pat. Pub. No. 2003/0143309, "Kindie") in view of Haarasilta et al. (US Pat. No. 5,176,927, "Haarasilta"). The Office Action indicates that additional evidence is relied upon from the documents identified as Eragrain Teff, Teff bv and Teff - nutrition data. Applicant respectfully traverses the rejection.

Amended claim 1 of the present application reads as follows.

> A flour of a grain belonging to the genus *Eragrostis*, comprising a falling number of the grain at the moment of grinding being at least 250.

The Office Action states that Kindie "does not disclose that 'the falling number of the grain at the moment of grinding is at least 250'." The Office Action also indicates that the Haarasilta the reference discloses choosing a specific falling number range of a given flour, and indicates that an obvious combination of the Kindie reference with the Haarasilta reference would make obvious the invention recited in claim 1.

A review of the Haarasilta reference reveals that grains and flours containing gluten are discussed, but that no grains or flours that are gluten-free are discussed or suggested. That is, the entire disclosure of Haarasilta appears to be directed to

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baked goods that are made from grains or flours that contain gluten, such as rye, wheat or oat. As stated in the specification of the present application, *Eragrostis* can be used to produce gluten-free flour, as well as gluten-free products. See, page 3, lines 15-29 of the present specification. In particular, the present disclosure is directed to gluten-free flours and products that can be used or consumed by persons having gluten intolerance. The disclosure by Haarasilta accordingly does not pertain to gluten-free flours and products, and does not permit the presently disclosed advantages such as providing flours and products that can be consumed by persons having gluten intolerance.

The Office Action further indicates that Haarasilta discloses that "a specific falling number range of a given flour may be chosen (or optimized) depending on the production process variables (such as process duration or process temperature) for a chosen and product." However, the processes described in Haarasilta are specific to flours that contain gluten and specific to the processes used to make dough from the specified flours. For example, Haarasilta indicates that rye flour with a lower falling number may be used to produce sour, thick crispbread. Therefore, it would be apparent from the Haarasilta reference that the choice of a flour with a given falling number would depend on a number of variables, including the composition of the flour itself.

Accordingly, it cannot be said of the Haarasilta reference that a falling number range of a grain belonging to the genus *Eragrostis* is disclosed or even suggested. None of the factors that may influence the selection of a falling number of a grain that is gluten-free are identified or suggested. Furthermore, none of the factors that may influence the selection of a falling

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number of a gluten-free grain for processing into a food product such as injera bread are identified or suggested. Clearly, gluten-free food products, such as injera bread, are produced according to a significantly different process than the "dry cereal products" disclosed by Haarasilta. Accordingly, a person of ordinary skill in the relevant art would be unaware of the falling number recited in claim 1 for a flour of a grain belonging to the genus *Eragrostis*, notwithstanding the disclosures of Kindie and Haarasilta.

In addition, it would not be obvious to combine the references of Kindie and Haarasilta, especially when the cited references are considered as a whole as is required in a consideration of obviousness. For example, the entire Kindie reference is directed to an apparatus for flat leavened bread such as Ethiopian injera bread. The disclosure by Haarasilta is directed to improving a production process of baked products that have lower water concentrations to produce "dry cereal products." Haarasilta discusses only flours containing gluten and the different additions of enzymes to the different flours to reduce the needed moisture concentration in the baking dough. The dough preparations described by Haarasilta would not work properly in the apparatus described by Kindie, since the Kindie apparatus is specifically designed for flat leavened bread including Ethiopian injera bread, the batter for which can be dispensed onto a cooking surface in a liquid batter form. The dough described by Haarasilta is physically laid out, permitted to rise, and then baked. Accordingly, while Haarasilta calls for a dough with reduced moisture content, Kindie describes a breadmaking apparatus using high moisture content batter that is dispensed as a liquid. Because the disclosures by Kindie and Haarasilta may not be

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combined to produce a workable result, or without changing the principal of operation described in either reference, it would not be obvious to combine the references, especially when taken in their entirety.

Moreover, because there is no teaching or suggestion in the Haarasilta reference regarding a flour of a grain belonging to the genus *Eragrostis*, and because falling numbers vary significantly depending on the desired process and type of flour, e.g., gluten containing rye and wheat, it cannot be said that Kindie and Haarasilta, taken alone or in proper combination, disclose or suggest a flour as recited in claim 1 of the present application.

The Office Action indicates that the falling number recited in claim 1 is within a range that can be determined by routine experimentation since "the general conditions of the claims are discloses in the prior art." As noted above, neither Kindie nor Haarasilta disclose, or even suggest, a falling number range for a flour of a grain belonging to the genus *Eragrostis*. The Office Action apparently notes that teff flour typically has a falling number of 300, citing the NPL reference entitled Teff bv. However, the cited Teff bv reference is not prior art in accordance with the first "Graham" factor listed on page 5 of the Office Action, since its apparent critical date is December of 2004, well after the priority date of the present application. Accordingly, none of the cited references of Kindie, Haarasilta or Teff bv disclose the general conditions of the claims, so that arriving at the range for a falling number recited in claim 1 would not be obvious to one of ordinary skill in the art.

For the above reasons, claim 1 is patentable over the cited combination of Kindie and Haarasilta, whether taken alone or in proper combination. Accordingly, the rejection of claim 1 under

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35 U.S.C. section 103(a) over Kindie in view of Haarasilta is overcome, and Applicant respectfully requests that it be reconsidered and withdrawn.

Claims 4, 8-10, 15-23, 29, 39-41 and 45-48 ultimately depend from claim 1, and should be allowable over the cited combination of Kindie and Haarasilta for at least the reasons that claim 1 is allowable over the combination, as well as because of the further limitations recited in each of the dependent claims. Accordingly, Applicant respectfully requests that the rejection of claims 4, 8-10, 15-23, 29, 39-41 and 45-48 under 35 U.S.C. § 103(a) over Kindie in view of Haarasilta be reconsidered and withdrawn.

Regarding claim 27, none of the cited references disclose, or even suggest, the preparation of a food product from unground grain belonging to the genus *Eragrostis*. Furthermore, none of the cited references, taken alone or in proper combination, disclose, or even suggest, a falling number of the grain at a moment of preparation being at least 250. Accordingly, claim 27 is patentable over the cited combination of Kindie and Haarasilta, taken alone or in proper combination. In addition, claims 62-65 depend from claim 27, and should be allowable for at least the reasons that claim 27 is allowable over the cited combination of Kindie and Haarasilta, as well as because of the further limitations recited in each dependent claim. Accordingly, Applicant respectfully requests that the rejection of claims 27 and 62-65 under 35 U.S.C. § 103(a) over Kindie in view of Haarasilta be reconsidered and withdrawn.

Regarding the explanation of the rejections of claims 8-9, the basis for the explanations appears to be drawn from the NPL references entitled Teff Uncooked and Eragrain Teff, which are not prior art to the claims of the present application, since their

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apparent critical dates fall well after the priority date of the present application. In addition, the cited references do not disclose or suggest a relationship between a nutritional content of teff and a falling number. Accordingly, the cited NPL references entitled Teff Uncooked and Eragrain Teff do not teach or suggest to one of ordinary skill in the art the subject matter recited in the claims of the present application, and therefore do not make obvious the present claims.

The Office Action indicates the following claim rejections under 35 U.S.C. § 103(a) based on various combinations of cited art with the combination of Kindie and Haarasilta.

Claim 14 is rejected over Kindie and Haarasilta and further in view of the NPL document entitled Celiac Recipes.

Claim 24 is rejected over Kindie and Haarasilta and further in view of the NPL document entitled Teff Pasta.

Claims 25-26 are rejected over Kindie and Haarasilta and further in view of Lee et al. (US Pat. No. 3,843,827).

Claim 28 is rejected over Kindie and Haarasilta and further in view of Slimak (US Pat. No. 4,911,943).

Claims 2-3, 5-6 and 49-53 are rejected over Kindie and Haarasilta and further in view of the NPL document Stallknecht et al. entitled "Teff: Food Crop for Humans and Animals," ("Stallknecht").

Claims 7, 30, 42, 54-55 and 66-68 are rejected over Kindie and Haarasilta and Stallknecht and further in view of Otsubo (US Pat. No. 5,130,158).

Claims 11-13, 31-32, 43-44, 56-61 and 69-74 are rejected over Kindie and Haarasilta and Stallknecht and Otsubo and further in view of the NPL document entitled "Science of Bread: Ethiopian Injera Bread," ("Science of Bread ").

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Claims 33-38 are rejected over Kindie and Haarasilta and Stallknecht and Otsubo and Science of Bread and further in view of Celiac Recipes.

Without acceding to the correctness of the above rejections, Applicant respectfully traverses each of the above-listed rejections. In addition, Applicant reserves the right to contest the conclusions of obviousness or notice of evidence taken by the Examiner with respect to the above rejections.

Each of the above rejected claims depend from claim 1, which patentably distinguishes over the combination of Kindie and Haarasilta for the reasons discussed above. The additional cited references do not cure the deficiencies noted above with respect to the Kindie and Haarasilta references as applied to claim 1. Accordingly, claims 2-3, 5-7, 11-14, 24-26, 28, 31-38, 42-44, 49-61 and 66-74 also patentably distinguish over the cited combination of Kindie and Haarasilta, as well as the additional cited references listed above, for at least the reasons that claim 1 is so patentable, and also because of the further recitations found in each of the above-listed dependent claims. Accordingly, claims 2-3, 5-7, 11-14, 24-26, 28, 31-38, 42-44, 49-61 and 66-74 are allowable over the combination of Kindie, Haarasilta and the additional above cited references, taken alone or in proper combination. Applicant therefore respectfully submits that the rejection of claims 2-3, 5-7, 11-14, 24-26, 28, 31-38, 42-44, 49-61 and 66-74 under 35 U.S.C. § 103(a) over Kindie and Haarasilta in view of the additional cited references listed above is overcome, and respectfully requests that it be reconsidered and withdrawn.

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CONCLUSION

New claim 75 is added to recite subject matter previously found in claim 28 for better form. In view of the above amendments and discussion, Applicant respectfully submits that the application is now in condition for allowance, and earnestly solicits notice to that effect. The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,
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Dated: January 4, 2010

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